(Spl.-H.C.A.S.C.D., 78-e)

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF BOMBAY AT GOA
PANAJI, GOA.
APPELLATE SIDE

DISTRICT :

WRIT PETITION NO. 62 OF 2005

Office Notes, Office Memoranda of Quorum, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. M. S. Sonak, Advocate for the Petitioners.

Mr. Shivan Dessai, Advocate for the Respondents.

CORAM : A. P. LAVANDE, J.

DATE : 25th FEBRUARY, 2005.

P.C. :

1. Heard Mr. Sonak, Advocate for the petitioners and Mr. Shivan Dessai, Advocate for all the respondents.

2. Rule.

Mr. Dessai waives notice on behalf of the respondents. By consent heard forthwith.

3. The petitioners are the original plaintiffs in Regular Civil Suit No. 15 of 2004 filed before the Civil Judge, Junior Division at Pernem against the respondents herein. In the said suit, at the instance of the defendants, the application under Order 1, Rule 10 of the C.P.C. was filed to join one Shri Hari Gopal Naik as a defendant on the ground that he had filed an application claiming tenancy. The said application was allowed by the trial Court against which the petitioners herein filed Writ Petition No. 419/04. This Court by

order dated 8/10/04 issued rule and stayed the order dated 26/08/04, allowing the application under Order 1, Rule 10 filed by the original defendants. However, this Court clarified that the order of stay will not come in the way of Shri Hari Gopal Naik from arguing as another party in Regular Civil Suit NO. 15/04 at appropriate stage.

4. The original plaintiffs had also filed Civil Miscellaneous Application No. 146/04 seeking interim relief against the defendants. When the application for interim relief came up for hearing, the learned trial judge was inclined to hear said Shri Hari Gopal Naik on the ground that, that was the appropriate stage for

hearing said Shri Hari Gopal Naik in terms of the order passed by this Court. Aggrieved, the petitioners have filed the present Petition. Mr. Sonak, learned Counsel appearing for the petitioners submits that in view of the order dated 8/10/04 passed by this Court in Writ Petition No. 419/04, the trial Court had no jurisdiction to hear said Shri Hari Gopal Naik in proceedings filed by the plaintiffs seeking interim relief. According to the learned Counsel, that was not the appropriate stage and therefore, the trial Court was not justified in holding that said Shri Hari Gopal Naik ought to be heard while deciding the application for interim relief filed by the plaintiffs.

5. Mr. Dessai, learned Counsel appearing for the respondents, submitted that the trial Court was absolutely justified in holding that said Shri Hari Gopal Naik had to be heard while deciding the application for interim relief and therefore, this is not a fit case in which interference is called for by this Court against the impugned order.

6. I have considered the submission made by the learned Counsel for the parties. Having regard to the order dated 8/10/04 passed by this Court in Writ Petition No. 419/04, I am of the opinion that the trial Court had no jurisdiction to hear said Shri Hari Gopal Naik at the stage of

deciding the application for interim relief filed by the plaintiffs. The petitioners/plaintiffs had sought interim relief only against the defendants / respondents and therefore the issue before the trial Court was whether the plaintiffs were entitled to any interim relief against the defendants. There was no necessity for the trial Court to hold that Shri Hari Gopal Naik should be heard in the matter. I am unable to accept the submission made by the learned Counsel appearing for the respondents that it is necessary to hear Shri Hari Gopal Naik while deciding the application for interim relief filed by the plaintiffs.

7. In view of the above discussion, I hold that the impugned order

dated 18.12.04 is liable to be set aside and is accordingly set aside. The trial Court while deciding Civil Miscellaneous Application No. 146/04 shall not hear said Hari Gopal Naik and decide the application on the basis of the materials placed by the parties in accordance with law. Having regards to the fact that by the interim relief dated 11/02/05 this Court stayed further proceedings in Civil Miscellaneous Application No. 146/04, it would be proper to direct the trial Court to decide Civil Miscellaneous Application No. 146/04 expeditiously and in any event before 31/03/05. Parties to appear before the trial Court on 2/03/05 at 10.00 a.m. For appropriate directions. The Writ Petition stands disposed of in

aforesaid terms. Interim order dated 11/02/05 stands vacated. Certified copy expedited.

A. P. LAVANDE, J.

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